

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 560 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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ZAKIR ALIAS JAHANGIR HUSEIN BHAI SHEIKH

Versus

COMMISSIONER OF POLICE

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Appearance:

MR KD VASAVADA for Petitioner

MR HH PATEL, APP for Respondent No. 1, 2

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 09/12/1999

ORAL JUDGEMENT

1. The petitioner was extenuated by virtue of an order passed by the Deputy Commissioner of Police, Vadodara city, Vadodara on 11th February 1999 in exercise of powers u/s 56[B] of the Bombay Police Act [hereinafter referred to as 'the Act' for short].

2. Prior to passing the above order, the petitioner

was given notice by the externing authority as required u/s 59 of the Act. The allegations in the notice were that the petitioner is a head-strong and notorious person with a vindictive nature. He always carries with him a razor, a knife or a pipe, which he uses free hand. He is involved in eve-teasing. He extorts money from passersby, does not pay money for the things purchases made by him and thereby, has created an atmosphere of horror and terror which has disrupted the public order. Three offences are registered against him which are pending trial and therefore, it is proposed that he may be externed for a period of two years from the territories of Vadodara city and District of Vadodara rural, Anand, Panchmahals and Bharuch.

3. The externment proceedings were initiated and order came to be passed on 11th February 1999, wherein the externing authority took into consideration the three offences registered against the petitioner and other incidents and ultimately passed the order of externment. Before the authority, in the externment proceedings, the petitioner had examined six witnesses. The authority considered that these witnesses were friends and professional acquaintances of the petitioner and cannot be relied on and ultimately passed the order.

4. The order of externment was challenged in appeal provided u/s 60 of the Act. The grounds of challenge mainly were that the externing authority has not considered the depositions of the witnesses in an independent and impartial manner. That the statements made against the petitioner are only two police proceedings. That the petitioner has been acquitted in the case in respect of Cr.R. No. 267/95. The appellate authority also turned down the appeal and confirmed the order.

5. The petitioner has approached this Court to assail the above said orders. The main ground that is advanced by the petitioner is that the authority has not dealt with the statements of different witnesses and therefore, the order suffers from non-application of mind by the authority.

6. Mr. Vasavada, learned advocate for the petitioner has placed reliance on the above ground alone and pressed into service the decision of this Court in the case of Balvantsinh alias Naniyo Kalyansinh Rajput v/s Deputy Commissioner of Police as reported in 1999 [2] GLR 1023 and submitted that the orders of both the authorities are non-speaking. They have simply brushed

aside the depositions of the witnesses of the petitioner only on the ground that they are interested witnesses as they are friends or professional acquaintances. Mr. Vasavada submitted that no reasons are given for not accepting these depositions except that they are friends and therefore, there is non-application of mind.

7. Mr.H.H.Patel, learned AGP submitted that the externing authority has filed an affidavit in reply wherein he has dealt with this aspect of the defence witnesses examined by the petitioner. He has drawn attention of this court to para 4 of the affidavit. A look at this affidavit reflects the casual manner in which he authority seems to have exercised the powers. The authority states in the affidavit :

"After verifying the record of this case prima facie feel that all six witness produced by detenue they are all very closed friend of petitioner, and hence prima facie feel all six witnesses come before the authority they are not nutral witness, all six persons to give oral statement before the authority."

What is stated by the externing authority in the affidavit also does not disclose any reasons for rejecting the depositions of the witnesses examined by the petitioner except that they are friends of the petitioner, but there also the externing authority does not seem to have any concrete material to inter that they are friends of the petitioner, because the authority's say is on prima facie basis.

8. The proceedings of externment have been held to be quasi-judicial proceedings by this Court in the case of Chorubha Apabha v/s Sub Divisional Magistrate, Dholaka as reported in 1996 [3] GLH 53. It has also been held that a non-speaking order would exhibit carelessness by the externing authority while passing the order and the order would therefore stand vitiated. Adverting to the present case, if the order in question passed by the externing authority is seen, all that is stated is that the evidence produced by the defence is not satisfactory. Friends and professional acquaintances cannot defend the proposed externee as the same cannot be accepted as independent and impartial evidence. Bearing this, there is not a word with reference to the witnesses examined by the proposed externee / the petitioner. The authority does not say as to how many witnesses were examined and what they have stated broadly and why their depositions require rejection. An omnibus statement that because

they are friends or professional acquaintances, their depositions cannot be considered as independent and impartial, would not stand the test of a reasoned order expected of an authority exercising powers of a drastic steps in the nature of externment proceedings.

A look at the order of the appellate authority also indicates that this authority has also dealt with the arguments of the appellant / petitioner on this count in a very casual and cursory manner. In this view of the matter, keeping in mind the decision of this High Court in the case of Balvantsingh alias Naniyo [supra], the externment order would stand vitiated. The petition therefore deserves to be allowed.

9. The petition is allowed. The order of externment dated 11th February 1999 passed by the Deputy Commissioner of Police, Vadodara and the order in appeal in respect of petitioner - Zakir alias Jahangir Huseinbhai Shaikh, are quashed and set aside. Rule made absolute accordingly with no orders as to costs.

[A.L.DAVE, J.]

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